

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C-09-2850 MMC

SUSAN K. TOOR,

Plaintiff,

v.

FARHAD KHAN, et al.,

Defendants

**ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE WHY CLAIMS AGAINST
ONEWEST BANK SHOULD NOT BE
DISMISSED WITHOUT PREJUDICE;
SETTING BRIEFING SCHEDULE;
CONTINUING HEARING ON ONEWEST
BANK'S MOTION TO DISMISS**

Before the Court is defendant OneWest Bank, F.S.B. ("OneWest") motion, filed November 13, 2009, to dismiss the Second Amended Complaint ("SAC") as against One West. Plaintiff Suman Toor ("Toor") has filed opposition, to which OneWest has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court, for the reasons discussed below, will direct Toor to show cause why her claims against OneWest should not be dismissed for lack of subject matter jurisdiction.¹

"[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action with such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Where, as here, a district court has original jurisdiction over a federal claim, the district court may exercise supplemental jurisdiction over a state law claim if both the federal and

¹OneWest's motion does not address the issue of subject matter jurisdiction.

1 state law claims “derive from a common nucleus of operative fact.” See Trustees v. Desert
2 Valley Landscape & Maintenance, Inc., 333 F.3d 923, 925 (9th Cir.), cert. denied, 540 U.S.
3 1017 (2003).

4 In her SAC, Toor alleges two federal claims, specifically, the Fifth Cause of Action, a
5 claim brought under the Truth in Lending Act (“TILA”), and the Seventh Cause of Action, a
6 claim brought under the Real Estate Settlement Procedure Act (“RESPA”). Both the Fifth
7 and Seventh Causes of Action are alleged only against defendant Mortgagelt, Inc.
8 (“Mortgagelt”), which entity, Toor alleges, originated a mortgage loan to Toor in 2006. In
9 the Fifth Cause of Action, Toor alleges that Mortgagelt, at the time it originated the loan,
10 failed to provide adequate disclosures to Toor. (See SAC ¶ 73.) In the Seventh Cause of
11 Action, Toor alleges that Mortgagelt, when the loan closed in 2006, gave an unlawful
12 “kickback” to Toor’s mortgage brokers. (See SAC ¶¶ 83, 89.)

13 Toor also alleges five state law claims,² two of which are alleged against OneWest,
14 which entity, Toor alleges, was the servicer of her mortgage. Specifically, in the Sixth
15 Cause of Action, Toor asserts a claim for relief under § 17200 of the California Business &
16 Professions Code, alleging that OneWest, in 2008, breached an oral agreement that it
17 would not foreclose on her property if she made “two payments.” (See SAC ¶¶ 28-31, 35,
18 80.) In the Eighth Cause of Action, Toor asserts a claim for relief under § 2923.5 of the
19 California Civil Code, alleging that One West, prior to foreclosing on Toor’s property in
20 2008, “failed to make a good faith effort to discuss foreclosure avoidance alternatives” (see
21 SAC ¶ 98).

22 In sum, Toor’s two federal claims pertain to conduct and omissions on the part of
23 Mortgagelt in 2006, at or about the time Toor entered into a mortgage agreement with
24 Mortgagelt, whereas Toor’s two state law claims against OneWest pertain to acts and
25 omissions by OneWest and occurring approximately two years later. Although Toor’s
26 federal claims against Mortgagelt and her state law claims against OneWest all pertain to

27
28 ²The parties are not diverse. Consequently, any jurisdiction the Court may have
over the state law claims would be supplemental in nature

1 Toor's mortgage, the claims do not appear to arise from a common nucleus of operative
2 fact. In particular, Toor does not allege that OneWest's foreclosure was unlawful by reason
3 of Mortgage's alleged violations of TILA and/or RESPA occurring in 2006; rather, as
4 discussed above, Toor alleges that OneWest's foreclosure was unlawful by reason of new
5 and independent conduct on the part of OneWest in 2008. In short, it does not appear the
6 state law claims against OneWest "derive from" the same facts as those on which Toor's
7 federal claims are based. Cf. Desert Valley Landscape, 333 F.3d at 925 (holding federal
8 and state law claim derived from common nucleus of operative fact, where facts necessary
9 to establish defendant's liability under federal statute "would have been part of the trial on
10 [the] state law [claim]").

11 Under such circumstances, it would appear the Court lacks supplemental jurisdiction
12 over the state law claims alleged by Toor against OneWest. Accordingly, the Court will
13 direct Toor to show cause why her state law claims against OneWest should not be
14 dismissed, without prejudice to Toor's refiling them in an appropriate state court forum.

15 Specifically, the Court sets the following briefing and hearing schedule:

16 1. No later than January 22, 2010, Toor is hereby DIRECTED to show cause, in
17 writing and not to exceed ten pages in length, why her state law claims against OneWest
18 should not be dismissed without prejudice to Toor's refiling them in state court.


19 2. No later than January 29, 2010, OneWest shall file any reply to Toor's response
20 to the instant order to show cause, not to exceed ten pages in length.

21 3. No later than February 5, 2010, Toor shall file any supplemental response, not to
22 exceed five pages in length.

23 4. The hearing on OneWest's motion to dismiss is hereby CONTINUED from
24 January 8, 2010 to February 19, 2010.

25 **IT IS SO ORDERED.**

26
27 Dated: December 23, 2009

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MAXINE M. CHESNEY
United States District Judge